

## Rule 411 INDEMNIFICATION OF DISTRICT

Adopted 02-14-08

- A. Requirement for an Indemnification Agreement
1. Within 10 days of receiving a petition, complaint or other legal notice by a third party challenging an application to the District, or the Districts issuance or renewal of a permit, or the manner in which the District is interpreting or enforcing permit terms or conditions, the District shall notify the applicant or permit holder in writing.
  2. The applicant or permit holder may, within 30 days of notification, request cancellation of the application or revocation of the permit. If the applicant or permit holder fails to respond to the notification by the District within the 30 day period, they shall be deemed noncompliant and the application shall be subject to cancellation or the permit subject to revocation by the District pursuant to Section 9, below.
  3. An applicant who fails to cancel the application or request revocation of the permit shall be responsible for reimbursement to the District for all reasonable and necessary costs to defend from legal challenge the actions of the District taken in relation to the application or permit, except as may be provided in an appeal approved by the District Board pursuant to Section 6, below.
  4. Within 30 days of notification, an applicant or permit holder who does not request cancellation of an application or revocation of a permit, shall negotiate and sign an indemnity agreement with the District. The indemnity agreement shall include, but not be limited to: payment of all court costs and attorney fees, costs of any judgments or awards against the district, and damages or settlement costs.
  5. On a case-by-case basis, and as related to the indemnity obligation provided in this rule, the Air Pollution Control Officer may require security from the applicant in a form determined by the Air Pollution Control Officer.
  6. If the applicant or permit holder disagrees with the requirement to negotiate and sign an indemnity agreement with the District, or any portion of the indemnity agreement, they may appeal to the District Board by filing an appeal request with the District within 30 days of receiving the notification by the District. The appeal will be placed on the agenda of a regularly scheduled meeting. Action on the application by the District shall be suspended pending a decision by the Board on the appeal.

7. Failure on the part of the applicant or permit holder to negotiate and sign the agreement shall be deemed noncompliance and will result in the application being subject to cancellation or the permit being subject to revocation by the District, pursuant to Section 9, below, unless an appeal releasing the applicant or permit holder has been granted by the District Board.
8. With respect to negligence or misconduct by the District, when any court action results in a ruling for the plaintiff or petitioner, the applicant or permit holder may request from the court a determination of the percentage of fault caused by District negligence or misconduct. If the court assigns fault to the District, the liability of the applicant or permit holder shall be reduced by that percentage caused by District negligence or misconduct.
9. Any action to cancel an application or revoke a permit for non-compliance with this rule will be undertaken by the District under the procedures provided in these rules or applicable state or federal air pollution control laws for cancellation of the type of application or revocation of the type of permit at issue. For Permits to Operate the District shall request revocation, and the Hearing Board shall hear the revocation request, in the manner provided for an order for abatement.
10. Once a Permit to Operate for a stationary source of emissions is revoked for noncompliance with this rule, or at the request of the permit holder, any new application will be evaluated as an application for new stationary source. At the sole discretion of the Air Pollution Control Officer, an Indemnification Agreement, as specified above, may be required before a decision on the new application is rendered.
11. Notice of this Indemnification requirement shall be included in all forms of the District that are used by applicants to apply for permits, renewals, or other actions by the District.